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September 4, 2015

Via Electronic Filing

The Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Centre Street, Room 2104
New York, New York 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Re: *Permission Data, LLC v. Newsmax Media, Inc.*
Case No.: 1:14-cv-07129-PAE

Dear Judge Engelmayer:

We are legal counsel for the defendant/counter-plaintiff, Newsmax Media, Inc. (“Newsmax”), and are joined in this letter by Justin Mercer, Esq., counsel for third-party, Forensiq LLC (“Forensiq”). The objective of this letter is to afford Forensiq sufficient time to respond to Newsmax’s recently-propounded Subpoena to Produce Documents, Information or Objects (“Subpoena”), while simultaneously preserving Newsmax’s rights under the upcoming September 8, 2015 discovery deadline.¹

On August 18, 2015, Newsmax took the deposition of the Fed. R. Civ. P. 30(b)(6) corporate representative of a third-party publisher (“Sub-Publisher”)² responsible for the provision of the majority of the email addresses supplied by Permission Data to Newsmax. During this deposition, the Sub-Publisher’s corporate representative (the “Deponent”) testified that “we have a lot of fraud prevention systems in our company,” and that “[u]nfortunately, we had a bad seed that got through.” The Deponent specifically identified Forensiq (formerly known as CPA Detective) and its fraud management platform, as among the fraud prevention tools that it utilized to ensure that the email addresses garnered in connection with Newsmax’s campaigns were authentic, non-computer generated addresses.³

On August 24, 2015, Newsmax effectuated service of its Subpoena upon Forensiq. On

¹ While the plaintiff/counter-defendant, Permission Data LLC (“Permission Data”) disputes the relevancy of the subpoenaed documents, it does *not* oppose the requested relief, which is consistent with the relief requested in the September 2, 2015 letter jointly filed by Permission Data and Newsmax in which the parties collectively request a *limited* three (3) week extension of the existing fact discovery deadline. [D.E. 43]

² In deference to Permission Data’s earlier request to not identify the identity of its sub-publishers, Newsmax has agreed – on a no-waiver basis – for the purposes of this letter to identify the sub-publishers at issue solely as “Sub-Publisher” as the name of the particular sub-publishers is not germane to the present request.

³ Forensiq offers a number of solutions, including alerts, designed to combat many types of ad fraud, including conversion and affiliate fraud.

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September 1, 2015, Forensiq's counsel contacted Newsmax in an attempt to meet-and-confer regarding the scope and timing of the requested production. While the good faith conferral process remains on-going the parties have reached an agreement on a basic framework. There is no present dispute and the parties remain optimistic that this matter will be resolved without the need to further involve the Court. The only issue is timing, as Forensiq has indicated it needs until September 22, 2015 (which extends beyond the current September 8, 2015 fact discovery deadline) in which to search for and produce responsive documents. Newsmax has no objection to providing the requested enlargement, but wishes to preserve its right to seek judicial intervention should it ultimately prove necessary.

Consequently, the parties' jointly request that: (1) Forensiq be afforded until Tuesday September 22, 2015 in which to produce documents responsive to Newsmax's Subpoena correspondence, and (2) that Newsmax be granted until Monday, September 28, 2015 should it deem a pre-motion letter to compel necessary.

For all of the foregoing reasons, Newsmax and Forensiq jointly request that this Court grant the proposed extension. We thank the Court for its attention to this letter, welcome the opportunity to further explain the need for the requested enlargement, and await direction as to whether the Court desires a proposed agreed order for its consideration.

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